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Letter dated 25 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Vanuatu submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Counter-Terrorism Committee

03-34786 (E) 200503

Annex

Note verbale dated 18 April 2003 from the Permanent Mission of Vanuatu to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Republic of Vanuatu to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to Security Council resolution 1373 (2001) concerning counter-terrorism (CTC) and has the honour to attach herewith the report of the Republic of Vanuatu (see enclosure).

Enclosure

Report by the Republic of Vanuatu to the Counter-Terrorism Committee, made pursuant to Security Council resolution 1373 (2001) of 28 September 2001

The Prime Minister of the Republic of Vanuatu presents his compliments to His Excellency Sir Jeremy Greenstock, the Chairman of the Security Council Committee established pursuant to Security Council Resolution 1373 (2001) concerning counter terrorism ('Counter-Terrorism Committee)' and has the honour of presenting the report of the Republic of Vanuatu as required by Resolution 1373 (2001).

The Report is structured in terms of responses to each of the operative paragraphs and sub-paragraphs of Resolution 1373 (2001).

Operative Paragraph 1

Sub-paragraph (a)

Measures taken by the Republic of Vanuatu to prevent and suppress the financing of terrorist acts are set out in the responses to sub-paragraphs (b), (c) and (d) below.

Sub-paragraph (b)

It is an offence under subsection 14A(1) of the Proceeds of Crime Act No. 13 of 2002 to provide or collect by any means, directly or indirectly, money and intend, know or have reasonable grounds to believe that the money will be used in whole or in part to finance, directly or indirectly, terrorism or any act of terrorism, or any person or organization that is known to have carried out, or is reasonable suspected of carrying out, acts of terrorism.

It is also an offence under subsection 14A(2) for a person to enter into or facilitate, directly or indirectly, any transaction in respect of property and knows or has reasonable grounds to believe that the purpose of the transaction in whole or in part is to finance, directly or indirectly, terrorism, or any act of terrorism, or any person or organization that has carried out, or is reasonably suspected of carrying out, acts of terrorism.

The penalty for both of these offences is, in the case of an individual, imprisonment for up to 20 years and in the case of a body corporate, a fine of up to VT500,000,000.

If a body corporate is convicted of either of these two offences, and any director, manager, secretary or other officer of the body corporate has knowingly been a party to the offence, this person is guilty of an offence punishable on conviction by imprisonment of up to 20 years.

This Act has been in force since 3 February 2003.

Sub-paragraph (c)

Changes have been made to our legislation to provide for freezing accounts and assets at banks and financial institutions.

The Reserve Bank of Vanuatu has issued a directive to banks pursuant to sections 21 and 53 of the Financial Institutions Act. This directive took effect on 18 March 2002. It requires banks that have accounts with persons or institutions named in the lists made by the Committee pursuant to paragraph 6 of United Nations Security Council Resolution 1267 (1999) ('the 1267 Committee'), to take the following steps:

- Accounts are to be frozen immediately and there is to be no remission of funds from the account(s).
- There should be no acceptance of funds into the account(s).
- The owner of the account is not to be notified that the account has been frozen or remission of funds, or acceptance of funds from or into the accounts, has been suspended. Further, the owner of the account is not to be notified that details of the account are being reported to appropriate authorities.
- The bank is to immediately notify both the Reserve Bank of Vanuatu and the Financial Intelligence Unit ('FIU') of the State Law Office of the existence of the account(s).
- Within 24 hours (one working day) of notification of the existence of the accounts, the account is to be closed without notification to the beneficial owner(s) of the account. Funds are not to be remitted. Full details of such closed accounts are to be provided to the Reserve Bank of Vanuatu.

The Attorney General would then take the appropriate steps under the Proceeds of Crime Act No. 13 of 2002 to obtain restraining orders over the frozen accounts, until such time as the owners have been convicted, in which case the Attorney General would apply for a forfeiture order for the monies in the account to be forfeited to the State.

The Financial Institutions Act No. 2 of 1999 Anti-terrorism regulations Order No. 9 of 2002 requires domestic banks to freeze accounts of terrorist entities. A terrorist entity is any Taliban, Al-Qaida or other entity designated by the 1267 Committee, the Security Council or declared by the Reserve Bank. The bank must immediately give written notice of the account to the Reserve Bank of Vanuatu and to the FIU. It must then close the account within 24 hours of giving this notice. These regulations came into effect on 2 April 2002 and made as regulations the contents of the Reserve Bank's directive of 18 March 2002.

To date, there have been no instances of accounts or assets of identified individuals and entities having been identified in Vanuatu.

On 3 April 2002, the Financial Services Commission issued a Practice Note to offshore banks that have accounts with persons or institutions named in list made by the 1267 Committee. Those banks must take the following steps:

- Accounts are to be frozen immediately and there is to be no remission of funds from the account(s); and

- The bank is to immediately notify the Financial Intelligence Unit of the State Law Office of the existence of the account(s), the name of the account holder(s) and their account balances.

Sub-paragraph (d)

The Vanuatu Parliament enacted the United Nations Act No. 1 of 2002 in November 2002. This Act has been in force since 3 February 2003.

The Act gives the Prime Minister power to make orders to enable Vanuatu to fulfil the obligations undertaken by it under Article 41 of the Charter of the United Nations.

An order (subsidiary legislation) has been prepared to give effect to resolutions 1267 (1999), 1333 (2000) and 1373 (2001) of the United Nations Security Council. It is envisaged that this order will be signed into force in the near future. In the order, "Specified entity" is defined as every Al-Qaida entity, the Taliban, every Taliban entity

and Usama Bin Laden. Under the order, the collecting or providing of duns for specified entities is prohibited by persons in Vanuatu or by Vanuatu citizens.

The order prohibits dealing with property of, or derived or generated from property of, specified entities.

The order requires that persons in possession or control of property that the person suspects on reasonable grounds is property that is or may be owned or controlled by, or on behalf of, a specified entity must report it to the Attorney General.

Persons in Vanuatu and Vanuatu citizens are prohibited from making property, or financial or other related services, available to specified entities.

Operative Paragraph 2

Sub-paragraph (a)

It is government policy to refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts. The order that has been prepared pursuant to the United Nations Act (and which has yet to be brought into force) prohibits persons in Vanuatu and Vanuatu citizens in any place outside Vanuatu from recruiting other persons as a member of a group or organization, knowing that the group or organization is a specified entity.

"Specified entity" is defined as every Al-Qaida entity, the Taliban, every Taliban entity and Usama bin Laden.

The Explosives Act [CAP. 6] Anti-terrorism regulations Order No. 6 of 2002 prohibits persons from exporting from Vanuatu explosives or components of explosives to any terrorist entity. "Terrorist entity" is defined as the Taliban, Al-Qaida or any other entity designated by the 1267 Committee or by or under one of more other resolutions of the United Nations Security Council. These regulations came into force on 2 April 2002

Vanuatu does not yet have legislation specifically prohibiting the supply of weapons to terrorists. However, under section 9 of the Firearms Act [CAP. 6], the licensing officer must not grant a firearm licence to any person who is for any reason unfit to be entrusted with a firearm. If a person was on one of the United Nations lists of terrorist persons that would be a sufficient reason to not grant that person with a firearm licence.

Sub-paragraph (b)

There is liaison between our law enforcement agencies and regulatory agencies to ensure that there is regular sharing of information and intelligence within country, so as to prevent the commission of terrorist acts. Further, the FIU can share information with bodies outside Vanuatu without the need to enter into treaties, memoranda of understanding or protocols. Hence, if ever the need arose, the FIU could rapidly share information with counterparts in other countries so as to provide early warning to other States or to prevent the commission of terrorist acts.

The Financial Transactions Reporting Act No. 33 of 2000. Anti-terrorism regulations Order No. 10 of 2002 deems suspicious all transactions or proposed transactions by terrorist entities, thus requiring a suspicious transaction report to be made to the FIU. A terrorist entity is any Taliban, Al-Qaida or other entity designated by the UN 1267 committee or the Security Council.

Secondly, the regulations in Order No. 10 of 2002 provide that if any entity conducts a transaction or seeks to conduct a transaction that the financial institution reasonably suspects involves funds that are being, likely to be

or have been used by a terrorist entity, for terrorism or for acts of terrorism, then this is deemed suspicious and a report must be made to the FIU.

Finally, these regulations also prescribe that any entity that by non-formal means transfers remits exchanges or otherwise deals with money or money's worth or value for the purposes of remittance, transfer or payment to places outside of Vanuatu is a financial institution and so must comply with the Financial Transactions Reporting Act.

Any information received by the FIU by way of a suspicious transaction report or otherwise, that relates to a terrorist entity or person suspected of being involved with terrorism will be shared immediately with foreign counterparts.

Sub-paragraph (c)

It is government policy to deny safe haven to terrorists.

The Immigration Act [CAP. 66] Anti-terrorism regulations Order No. 7 of 2002 prohibits the entering of Vanuatu, including its territorial waters, of individuals who are or are reasonably suspected of being terrorist entities, or are or are reasonably suspected of being members of a terrorist entity.

These regulations also state that an individual must not be granted asylum in Vanuatu if/her she is or is reasonably suspected of being a terrorist entity, or is reasonably suspected of being a member of a terrorist entity, or has engaged or is reasonably suspected of having engaged in an act of terrorism, or has funded, directly or indirectly, or is reasonably suspected of having funded, directly or indirectly, terrorism or acts of terrorism.

A terrorist entity means the Taliban, Al-Qaida or any other entity (defined as an individual, body corporate, an unincorporated association or organization, or any other body) designated from time to time by the United Nations 1267 Committee, or by under one or more other resolutions of the United Nations Security Council.

Sub-paragraph (d)

There is no legislation at present to prevent terrorists acting within Vanuatu territory against other States or citizens. Such legislation will be considered by the government for enactment.

Sub-paragraph (e)

The government intends to amend the Criminal Code at the next session of Parliament to make terrorist acts a serious criminal offence.

Financing of terrorism is a serious offence under Vanuatu Law. The punishment reflects the seriousness of the crime in that an individual faces imprisonment of up to 20 years and a body corporate a fine of up to VT500,000,000. To date, no one has been charged with or convicted of this offence.

Sub-paragraph (f)

Vanuatu can assist with other States' criminal investigations or criminal proceedings under its Mutual Assistance in Criminal Matters Act No. 14 of 2002. This Act has been in force since 3 February 2003.

This Act provides a framework for requests to and by Vanuatu for assistance in criminal matters. It applies for all foreign countries. The Act regulates the provision by Vanuatu of international assistance when a request is made

by a foreign country for taking of evidence, production of a document, issue of a search warrant and seizure of any thing relevant to a proceeding or investigation, the forfeiture or confiscation of property, or the restraining of dealings in property that may be forfeited or confiscated.

The Act also facilitates Vanuatu providing international assistance when a request is made by a foreign country to make arrangements for a person who is in Vanuatu to travel to the foreign country to give evidence in a proceeding; or to give assistance for an investigation. The Act also facilitates Vanuatu obtaining similar international assistance in criminal matters.

As the financing of terrorism is an offence in Vanuatu, requests for assistance with criminal investigations or criminal proceedings relating to this will be covered by this Act.

Sub-paragraph (g)

The border controls that Vanuatu has in place are directed at ensuring that all movements in and out of Vanuatu are captured and unwelcome persons prevented from entering the country.

The Immigration Act [CAP.66] Anti-terrorism regulations Order No. 7 of 2002 prohibits individuals from entering Vanuatu who are or are reasonably suspected of being a terrorist entity; or who are or are reasonably suspected of being a member of a terrorist entity. These regulations came into force on 2 April 2002.

"Terrorist entity" is defined as the Taliban, Al-Qaida or any other entity designated from time to time by the 1267 Committee or by or under one or more other resolutions of the United Nations Security Council.

Under section 3 of the Passports Act [ACT. 108], Vanuatu citizens will be issued with a passport on application. The applicant must give evidence of his or her entitlement to citizenship. Otherwise, subsection 5(2) provides for the Principal Passport Officer to issue a certificate of identify or travel document to a person who, he is satisfied, is either a Stateless person or a refugee. The appropriate checks would be made against the lists issued by the United Nations to ensure that travel documents are not given to named persons.

Operative Paragraph 3

Sub-paragraph (a)

Steps taken to intensify and accelerate the exchange of operational information between Vanuatu law enforcement agencies include the operation of the Combined Law enforcement Agency Group ('CLAG') and increased co-operation between agencies in different operational matters.

The FIU can also exchange information with its international counterparts. The Vanuatu FIU is a member of the Egmont Group which is another forum for exchanging operational information and members of our different law enforcement agencies have contact with their own international counterparts.

Sub-paragraph (b)

Vanuatu has continued to exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters.

As we have not identified persons or information directly related to the preventing of the commission of terrorist acts, we have not been in a situation of needing to share such information or otherwise cooperate, but if ever we have identified persons or have relevant information, we will exchange that information and cooperate as required to.

Sub-paragraph (c)

Vanuatu has not yet entered into any bilateral or multilateral arrangements and agreements to cooperate with other States to prevent and suppress terrorist attacks and take action against perpetrators of such Acts.

The Vanuatu government is open to approaches from other States to enter into negotiations for such arrangements and agreements.

Sub-paragraph (d)

Vanuatu has ratified the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999. This was done by the enactment by Parliament of the International Convention for the Suppression of the Financing of Terrorism Act No. 3 of 2002. It is envisaged that this Act will be brought into force by mid-2003.

The government is considering the ratification of the other eleven international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001).

As outlined above, the United Nations Act will provide a mechanism by which regulations can be made in order to implement Vanuatu's obligations under Security Council resolutions.

Sub-paragraph (e)

The implementation of the conventions, protocols and resolutions will be done once the relevant legislation is in force.

Sub-paragraph (f)

The Immigration Act [CAP. 66]. Anti-terrorism regulations Order No. 7 of 2002 states that an individual must not be granted asylum in Vanuatu if he or she is or is reasonably suspected of being a terrorist entity; or is or is reasonably suspected of being member of a terrorist entity; or has engaged or is reasonably suspected of having engaged in an act of terrorism; or has funded, directly or indirectly, or is reasonably suspected of having funded, directly or indirectly, terrorism or acts of terrorism.

A "Terrorist entity" is defined as the Taliban, Al-Qaida or any other entity designated from time to time by the 1267 Committee or by or under one or more other resolutions of the United Nations Security Council. These regulations came into force on 2 April 2002.

Sub-paragraph (g)

Legislation and procedures have not yet been developed to prevent the abuse of refugee status by terrorists. In practice, however, Vanuatu has not yet had cause to accept any refugees.

Vanuatu's extradition law does not make specific provision to prevent claims of political motivation being recognised as grounds for refusing requests for the extradition of alleged terrorists. Inclusion of such a provision will be considered for enactment by Parliament.

Additional relevant information

The government of Vanuatu is proposing to enact comprehensive anti-terrorism legislation based on the draft model law on combating terrorism prepared by the Commonwealth Secretariat, and received by Vanuatu last year. We understand that his model law has been prepared with regard to the relevant Security Council resolutions and has been the subject of wide consultation.